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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,420	01/04/2002	Alan R. Loudermilk	DBT-005	8866
7590	12/01/2003		EXAMINER	CHAN, WING F
Loudermilk & Associates PO Box 3607 Los Altos, CA 94024-0607			ART UNIT	PAPER NUMBER
			2643	
			DATE MAILED: 12/01/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/039,420	LOUDERMILK, ALAN R.
	Examiner	Art Unit
	Wing F. Chan	2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 June 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. It is noted that claim 1 recited alternate limitations, e.g. (1) or (2), and the following rejection will address the claim in the first alternative of (1).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Levy et al (US PAT. NO. 4,577,067 hereinafter Levy).

Levy discloses A method for providing on-hold music in a telephony environment such as a PBX (e.g. col. 4 lines 18-21) comprising the steps of: providing one or a plurality of music generation engines (e.g. program sources 44, 48, 52, 56, see col. 4 line 58 to col. 5 line 8) in a telephony system, wherein each of the music generation engines generates music of one or a plurality of styles of music (e.g. col. 5 lines 5-8), wherein the music generation engines collectively can generate a plurality of styles of music; receiving one or more telephone calls from one or more users, wherein the one or more users are placed on-hold by the telephony system; providing one or more audio prompts to the one or more users, wherein the one or more audio prompts inform the one or more users of the plurality of styles of music that can collectively be generated by the music generation engines and commands that may be entered by the one or more users via one or more

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telephony tones to select a particular style of music as on-hold music (e.g. see abstract); detecting via the telephony system one or more commands input by the one or more users; based on the detected one or more commands, selectively controlling the music generation engines to provide on-hold music to the one or more users; wherein, in response to the one or more commands entered by the one or more users, (1) on-hold music of a particular style is selected by a particular user and the music generation engines are controlled so that one of the music generation engines generates on-hold music of the particular style selected by the particular user. Note col. 2 line 17 to col. 3 line 31, col. 3 line 62 to col. 13 line 65 for example.

4. It is noted that claim 1 recited alternate limitations, e.g. (1) or (2), and the following rejection will address the claim in both alternatives.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levy in view of Baron (US PAT. NO. 6,506,969 with an effective filing date of 3/23/01).

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Levy differs from the claimed invention in not disclosing alternate limitation (2) in which after selecting the type of music styles, the on-hold party [particular user] is also able to modify the selected music based on one or more commands entered by the on-hold party.

However, it is old and well known in the art to modify the on-hold or background music by the on-hold party such that parameters such as tempo, tonality, etc. are modified to the user's likings, for example see Baron col. 21 lines 27-31, col. 22 lines 15-29, col. 14 line 55 to col. 16 line 4. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Levy to comprise the step of allowing the on-hold party to select the type of music styles desired, and also be able to modify the selected music based on one or more commands entered by the on-hold party to further modify the music to his/her specific likings thus further enhancing Levy's objectives (note Levy col. 1 lines 55-68, col. 2 line 66 to col. 3 line 30).

7. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levy in view of Baron (WO 00/17850 published on 3/30/00 in French).

It is noted that Baron (WO 00/17850) is a foreign equivalent of Baron, US PAT. NO. 6,506,969, therefore the US version will serve as a translation of the WO document and the above discussion of Baron, US PAT. NO. 6,506,969, is applicable to the WO publication.

Levy differs from the claimed invention in not disclosing alternate limitation (2) in which after selecting the type of music styles, the on-hold party [particular user] is also able to modify the selected music based on one or more commands entered by the on-hold party.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner W. F. Chan** whose telephone number is (703) 305-4732.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Curtis Kuntz, can be reached at (703) 305-4708. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 305-3900.



WING F. CHAN
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WFC
11/25/03